

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CAROLYN SIOUX GREEN,

Plaintiff,

v.

UNITED STATES COAST GUARD,
et al.,

Defendants.

CASE NO. C20-1804JLR

ORDER DISMISSING
COMPLAINT FOR LACK OF
SUBJECT MATTER
JURISDICTION

I. INTRODUCTION

Before the court are two motions: (1) *Pro se* Plaintiff Carolyn Sioux Green's motion to reopen two cases (Mot. (Dkt. # 6)); and (2) Defendants United States Coast Guard and United States Department of Veterans Affairs (the "VA") (collectively, "the Government") motion to dismiss for lack of subject matter jurisdiction (MTD (Dkt. # 10)). The court has considered the motions, the parties' submissions in favor of and in opposition to the motions, the relevant portions of the record, and the applicable law.

1 Being fully advised,¹ the court GRANTS the Government's motion to dismiss and
 2 DENIES Ms. Green's motion as moot.

3 II. BACKGROUND

4 This matter stems from an incident on February 21, 1994, when Ms. Green was
 5 serving in the United States Coast Guard aboard the USCG Cutter Mellon. (Compl. (Dkt.
 6 # 1-2) at 2.)² Ms. Green asserts that she "blacked out for a moment and slipped on the
 7 stainless steel log office ladder," causing her to fall and land "five consecutive times on
 8 [the] steel ladder rungs on [her] right buttocks." (*Id.*) This fall allegedly caused serious
 9 injury to her buttocks, hips, neck and back. (*See id.*)

10 Ms. Green challenges several aspects of her ensuing lack of treatment. She claims
 11 that the only treatment she received from the Government was physical therapy with
 12 some injections for her neck pain. (*Id.*) "Other than that, there was no treatment for the
 13 injury." (*Id.*) While in the Government's medical care, Ms. Green alleges that she was
 14 unfairly reprimanded two times: the first after Ms. Green complained about her
 15 "unqualified" primary care provider and the second after "asking for medical help
 16 without an appointment." (*Id.* at 3.) She further complains that her "medical board" was
 17 "one-sided" and a "joke." (*Id.*) The United States Coast Guard then "honorably

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19 ¹ No party requests oral argument (*see* Mot. at 1; MTD at 1; Defs. Resp. (Dkt. # 18) at 1;
 20 Pl. Resp. (Dkt. # 15) at 1), and the court finds that oral argument would not be helpful to its
 disposition of the motions, *see* Local Rules W.D. Wash. LCR 7(b)(4)

21 ² The complaint does not have paragraph numbers and features repeating page numbers
 22 for different attachments. (*See* Compl.) Thus, the court cites to the page number of the entire
 document.

1 medically discharged” Ms. Green “[f]our days before Christmas, with no treatment help
 2 or plan.” (*Id.* at 3.) Ms. Green states that the Government “stole[]” her “health, [her]
 3 family, [her] special and dear friends, a marriage, pets, etcetera” and that she has used up
 4 “[a]n enormous amount of personal finances” to “continue *waiting* for VA Puget Sound
 5 to decide to treat me.” (*Id.* at 4 (emphasis in original).)

6 Ms. Green filed suit in state court on October 12, 2020, against the Government
 7 and “Does 1 through 1000.” (*Id.* at 1, 49.) She includes with her complaint many
 8 attachments, including a letter to Secretary of Defense Mark T. Esper requesting
 9 apologies to her and her family (*id.* at 7-8); a timeline of her medical treatment and her
 10 previous commitment by the Thurston County Superior Court, styled as an “exhibit list”
 11 (*id.* at 11-18); similar exhibit lists from other lawsuits³ (*see id.* at 20-41); and a detailed
 12 account of when she was administered various drug medications by the VA (*id.* at 43-48).
 13 Ms. Green avers that the Government’s “prevention of care” spanning over six years
 14 resulted in “a life of incalculable carnage,” (Pl. Resp. at 2),⁴ and she seeks 1.5 billion
 15 dollars for harms related to her treatment, including “unlawful imprisonment, maiming of
 16 the Plaintiff[’]s brain, maiming of other body parts, loss of wages and economic value,
 17 loss of life, loss of liberty, [and] loss of pursuit of happiness,” (State Docs. (Dkt. # 3-1) at
 18

19 ³ Ms. Green reports that she had previously filed four cases in Thurston, Pierce and King
 20 Counties in 1995 and 2001 and has now filed three additional cases in Pierce and Thurston
 Counties. (Compl. at 18.)

21 ⁴ In response to the Government’s motion to dismiss, Ms. Green filed three docket
 22 entries’ worth of exhibits and includes the same briefing to preface each docket entry. (*See* Pl.
 Resp. at 1-5; Pl. Add. Resp. (Dkt. # 16) at 1-5; Pl. 2d Add. Resp. (Dkt. # 17) at 1-5.) The court
 cites to her response filed at docket entry number 15.

1 3-4). The Government removed this suit on December 14, 2020. (*See* Not. of Removal
2 (Dkt. # 1).)

3 Ms. Green moved to reopen cases No. DOT-95-0374 and No. 95-36172, (Mot. at
4 1), lawsuits that she identifies as having filed in “King County District Court” in 1995,
5 (Compl. at 18).⁵ The Government subsequently moved to dismiss on December 21,
6 2020, arguing that Ms. Green had failed to exhaust her administrative remedies. (*See*
7 MTD at 4-5.) In response, Ms. Green submitted copies of claim forms, known as SF-95
8 forms, that she filed with the Government. (Resp. at 6-9.) Both SF-95 forms were dated
9 after the Government’s motion to dismiss: Her claim with the VA was dated December
10 22, 2020, and her claim with the United States Coast Guard was dated December 24,
11 2020. (*Id.* at 7, 9.)

12 III. ANALYSIS

13 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) tests the
14 court’s subject matter jurisdiction. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035,
15 1039 (9th Cir. 2004); *see also Oregon v. Legal Servs. Corp.*, 552 F.3d 965, 969 (9th Cir.
16 2009) (“An objection that a federal court lacks subject matter jurisdiction may be raised
17 at any time.”). Federal courts are courts of limited jurisdiction, only possessing the
18 power authorized by the Constitution and statutes. *Kokkonen v. Guardian Life Ins. Co. of*
19 *Am.*, 511 U.S. 375, 377 (1994). As a starting point for this analysis, it is assumed that the
20 district court lacks subject matter jurisdiction, and the party asserting the claim bears the

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22 ⁵ Neither case seems to have been filed in the Western District of Washington, as neither
case number returned files in the court docketing system.

1 | burden of establishing that subject matter jurisdiction exists. *In re Dynamic Random*
2 | *Access Memory Antitrust Litig.*, 546 F.3d 981, 984 (9th Cir. 2008) (citing *Kokkonen*, 511
3 | U.S. at 377). “When a motion to dismiss attacks subject matter jurisdiction under Rule
4 | 12(b)(1) on the face of the complaint, the court assumes the factual allegations in the
5 | complaint are true and draws all reasonable inferences in the plaintiff’s favor.” *City of*
6 | *L.A. v. JPMorgan Chase & Co.*, 22 F. Supp. 3d 1047, 1052 (C.D. Cal. 2014).
7 | Additionally, because Ms. Green is a *pro se* plaintiff, the court must construe her
8 | pleadings liberally. *See McGuckin v. Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992).

9 | Under a liberal construction, Ms. Green appears to be bringing a medical
10 | malpractice tort claim for the alleged lack of care that the Government provided after her
11 | fall in February 1994. Ms. Green identified the suit as one for the tort of medical
12 | malpractice on the civil cover form she filed in state court. (State Docs at 71.)
13 | Moreover, her assertions in her complaint center on the failure of the medical treatment
14 | she received, (*see* Compl. at 2-4), and her subsequent filings confirm that her suit is
15 | asserting a tort claim against the Government, (*see* Pl. Resp. at 1 (labeling her claim as
16 | “tort claim”)). Her exhibits also focus on her medical history since 1994. (*See, e.g.*,
17 | “How Long It Took” (Dkt. # 15-7) (laying out experience in VA Puget Sound health care
18 | system); “Drug Transparency Part 3” (Dkt. # 16-2) (listing medication history); “Dr.
19 | Adam R. Geiger” (Dkt. # 17-3) (attaching notes from treatment with doctor).) Thus, the
20 | court analyzes Ms. Green’s medical malpractice tort claim against the Government as one
21 | brought under the Federal Torts Claims Act (“FTCA”), 28 U.S.C. §§ 1346, 2671-2680.

22 | //

1 The United States is immune from suit unless it consents to be sued. *United States*
 2 *v. Mitchell*, 445 U.S. 535, 538 (1980); *Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir.
 3 1995). Any waiver of immunity is strictly construed in favor of the United States.
 4 *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 33-34 (1992). The FTCA is a limited
 5 waiver of sovereign immunity that permits plaintiffs to bring claims against the United
 6 States for the “negligent or wrongful act or omission of any employee of the Government
 7 while acting within the scope of his office or employment.” 28 U.S.C. § 1346(b)(1).

8 As a jurisdictional prerequisite, an FTCA claim may only be instituted after the
 9 Government denies an administrative claim, either actually or constructively by failing to
 10 act upon the claim within six months. *See* 28 U.S.C. § 2675(a); *McNeil v. United States*,
 11 508 U.S. 106, 113 (1993) (“The FTCA bars claimants from bringing suit in federal court
 12 until they have exhausted their administrative remedies.”). “The requirement of an
 13 administrative claim is jurisdictional.” *Brady v. United States*, 211 F.3d 499, 502 (9th
 14 Cir. 2000). “Because the requirement is jurisdictional, it must be strictly adhered to.
 15 This is particularly so since the FTCA waives sovereign immunity.” *Id.* (internal citation
 16 and quotation omitted).

17 The Government provides competent evidence that Ms. Green had not filed an
 18 administrative claim to either the United States Coast Guard or the VA prior to filing suit
 19 in King County Superior Court.⁶ (Bartley Decl. (Dkt. # 11) ¶ 5; Gyenes Decl. ¶¶ 5-8.)
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21 ⁶ The United States Coast Guard found one claim by a “Carolyn Becker (formerly C.
 22 Green)” opened on January 1, 1995, and closed on December 31, 1995. (Gyenes Decl. (Dkt. # 12) ¶ 5.) However, Ms. Green does not suggest that she filed this claim. (*See* Pl. Resp.)

Ms. Green's SF-95 forms only confirm this fact, as both forms were filed in December of 2020 after she filed suit in October of 2020. (*See* Pl. Resp. at 6-9.) Because Ms. Green did not first present the claims to the Government and allow it the required six months to make a final disposition, she failed to exhaust her administrative remedies and cannot establish that subject matter jurisdiction is proper. *See Ruchert v. Williamson*, No. 3:16-cv-00413-BLW, 2017 WL 3120267, at *2 (D. Idaho July 21, 2017). Accordingly, the court grants the Government's motion and dismisses Ms. Green's complaint without prejudice. Furthermore, because the court lacks subject matter jurisdiction over the matter, the court denies Ms. Green's motion to reopen previous cases as moot.

Having dismissed the claims against the Government, only the fictitious and unnamed Doe defendants remain. (*See* Compl.) When an action is dismissed as to all defendants who have been served and only unserved defendants remain, "there is no reason to assume that there will be any further adjudication of the action." *Patchick v. Kensington Pub. Corp.*, 743 F.2d 675, 677 (9th Cir. 1984); *see also Assoc. of Women with Disabilities Adv. Access v. Rutledge, et al.*, No. 06CV2208 WQH (JMA), 2007 WL 9776618, at *1-2 (S.D. Cal. May 2, 2007) (closing case when only fictitious Doe defendants remained). Accordingly, the court closes this matter.

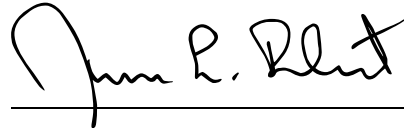
IV. CONCLUSION

For the foregoing reasons, the court GRANTS the Government's motion to dismiss Ms. Green's complaint for lack of subject matter jurisdiction (Dkt. # 10) and

Moreover, even if Ms. Green were the "Carolyn Becker" who filed that claim, she has not filed suit within six months of that administrative decision, as is required. *See* 28 U.S.C. § 2401(b).

1 DISMISSES her complaint without prejudice. The court further DENIES Ms. Green's
2 motion to reopen (Dkt. # 6) as moot.

3 Dated this 5th day of February, 2021.

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6 JAMES L. ROBART
7 United States District Judge
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